IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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J U D G M E N T

Smt. Shanta Ben & Ors. Vs. Vinod Kumar & Ors.

S.B. CIVIL MISC. APPEAL NO.673/1994.

Against the award dated 07.10.1994 made by the Motor Accidents Claims Tribunal, Chittorgarh in Claim Case No.44/1988.

Date of Judgment :: 2nd May 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Vineet Sanadhya for
Mr. Manish Shishodia, for the appellants.
None for the respondents.

BY THE COURT:

The claimants have preferred this appeal against the award dated 07.10.1994 made by the Motor Accidents Claims Tribunal, Chittorgarh in Claim Case No.44/1988 seeking enhancement over the amount of Rs.44,000/- awarded by the Tribunal towards compensation on account of accidental death of about 25 years old Gunwant Patel.

Background facts are that the claimant-appellants, mother, sister and brother of the victim Gunwant Patel, along with his father Raoji Bhai (since deceased) filed the claim

application with the submissions that on 02.09.1982 at about 8:40 p.m., the victim Gunwant Patel after reaching Chittorgarh bus stand from Nadiyad (Gujarat) was on the way to his house at Kumbhanagar, Chittorgarh in an auto-rickshaw bearing registration No. RJH 2286; that in front of Veterinary Hospital, the said auto-rickshaw was hit by an oncoming truck bearing registration No. RRB 2766; the auto-rickshaw turned over, the victim was thrown out, and received grievous injuries from the said truck and succumbed to the injuries in the hospital. The claimants averred that the deceased Gunwant Patel was 25 years of age and was earning Rs.704/- per month while working as Nakedar with the Municipal Board, Chittorgarh; and after personal expenditure at about Rs.200/- he was contributing to the family about Rs.500/- per month. The claimants sought compensation for loss of financial contribution from the deceased for about 12 years at Rs.500/- per month and towards non-pecuniary loss of his love, affection, and services; and made the claim for compensation against the persons related with both the aforesaid vehicles involved in accident.

After receiving the replies, framing necessary issues, taking evidence, and hearing the parties, the Tribunal held in issue No.1 that the deceased was earning Rs.704/- per month on the basis of salary certificate (Ex.15) and accepted the

case of the claimants that he was contributing Rs.500/- per month to the family; but found that the deceased was 29 years of age with reference to his date of birth, 18.09.1953, as stated in his Secondary School Certificate (Ex.17). In issues Nos.2 to 4, after appreciation of oral and documentary evidence, the Tribunal held that the fatal accident occurred for rash and negligent driving of the truck in question by the non-applicant No.1. Taking up quantification of compensation in issue No.5, with reference to the facts that the father of the deceased was carrying on business of engine spare parts; that there was one more elder son of the parents of the deceased who was already in service; and that their younger son Jagdish was also now in service, the Tribunal observed that it would be proper to take loss of the claimants at Rs.250/- per month; and that the claim for loss of contribution for 12 years could not be said to be incorrect looking to the age of the parents of the deceased (at 48 and 50 years). The Tribunal further considered it proper to allow non-pecuniary loss to the claimants at Rs.1,000/- each and held the non-applicants Nos. 1 and 2, driver and owner of the truck, liable for compensation and quantified the same at Rs.44,000/-; and allowed interest @ 12% per annum from the date of filing of the claim application i.e., 20.01.1983.

Assailing the award aforesaid on its quantification of

compensation, learned counsel for the appellants contended that the Tribunal has been in error in taking loss of contribution from the deceased only at Rs.250/- per month though, indisputably, the deceased was earning Rs.704/- per month. Learned counsel contended that the Tribunal has been in error in reducing the contribution of the victim to the family to merely one-third of his last known income on the likelihood of his marriage in future. Learned counsel further submitted that the deceased was in a settled job and the prospects of future enhancement of income ought also to have been provided and relied upon the decision of this Court in Smt. Kalli @ Kalyani & Ors. Vs. Indra Raj Bairwa & Ors. : 2004 WLC (UC) 789. Learned counsel further relied upon the decision of Hon'ble Delhi High Court in Mathura Dutt & Ors. Vs. DTC & Anr. : 2005 (1) ACC 33 to submit that there is no bar in awarding higher amount than that claimed in the claim application. Learned counsel further contended that the Tribunal has restricted the award on general damages too and the amount of Rs.44,000/- as allowed by the Tribunal towards compensation remains too low and grossly inadequate and deserves enhancement. Nobody has appeared for the respondents and in the circumstances of the case, there appears no reason to keep this matter relating to the incident of the year 1982 pending any further.

Submissions of the learned counsel have been given anxious consideration and the entire record of the case has been scanned through.

After examining the considerations adopted by the Tribunal, in the first place this Court is unable to comprehend the calculation of the amount of compensation at Rs.44,000/-. Per the observation of the Tribunal in issue No. 5, an amount of Rs.250/- was to be taken towards monthly dependency (that is, Rs. 3,000/- per annum) and there was no reason not to accept the loss of dependency for 12 years; and then, the three claimants were to be allowed Rs.1,000/- each towards non-pecuniary loss. Calculated on this basis, the amount comes only to Rs.39,000/- (36,000 + 3,000). Then, the considerations of the Tribunal putting the estimate on loss of dependency in issue No.5 at Rs. 250/- per month stands in contradiction to its finding in issue No.1 taking contribution of the deceased at Rs. 500/- per month. In an overall view of the matter the approach of the Tribunal in restricting the award of compensation to an inadequate amount of Rs.44,000/- cannot be approved and the award deserves suitable modification.

So far the contention of learned counsel for the appellants for considering future prospects on the basis of

Kalli's case (supra) is concerned, the deceased has been shown in the employment with the municipal board as a Nakedar earning Rs.704/- per month (vide salary certificate Ex.15) but then, there is no other relevant material on record to consider the aspects of likely enhancement of his income and contribution in future. The amount of Rs.704/- as stated in the salary certificate Ex.15 is also comprised of house rent allowance at Rs.30/-, medical allowance at Rs.30/- and provident fund at Rs.34/-. The claimants have not stated all the facts with clarity and have stated the age of the deceased incorrectly at 25 years though he was about 29 years of age as is apparent from the date of birth stated in the Secondary School Certificate (Ex.17) as 18.09.1953, the date of accident being 02.09.1982. The age of the father of the deceased has been shown at 50 years and that of the mother at 48 years. It is true that even if the claimants had claimed lesser amount, the same may not be restrictive of award of just compensation but in the overall circumstances of this case, the submission for considering enhancement in the income of deceased in the name of future prospects particularly for the purpose for loss of contribution for the claimants does not appear justified.

However, the considerations adopted by the Tribunal do not appear to be of proper estimate of the loss of contribution for the present claimants. Of course, the deceased was an

unmarried person in younger age and the likelihood of his getting married in future and thereby a larger part of his income getting diverted to his own family cannot be ruled out; but then, for that matter it does not appear correct to estimate loss of contribution only at about one-third of his last income; and, in the circumstances of the case, when nothing is provided towards future prospects, it appears appropriate to consider loss of income at least about one-half of his last known income; and interest of justice shall be served if pecuniary loss is calculated with application of multiplier 13 in view of the age of the mother of the deceased at 48 years.

Thus, for assessment of just compensation admissible in this case, it appears appropriate to consider loss of dependency at Rs.352/- per month (half of Rs.704/-, last income of the deceased) leading to a multiplicand of Rs.4,224/- per annum; and when capitalised with a multiplier of 13, pecuniary loss comes to Rs.54,912/-, rounded up to Rs.55,000/-. Father of the deceased had expired after filing of the claim application and the three claimants, mother, sister, and brother of the deceased deserve to be allowed Rs.5,000/- each towards non-pecuniary loss; and the claimants deserve to be allowed another Rs.2,000/- towards funeral expenses. In this manner, the claimants are entitled to compensation minimum in the sum of Rs.72,000/- (55,000 + 15,000 + 2,000)

and the award made by the Tribunal in the sum of Rs.44,000/- turns out to be too low and inadequate; and deserves modification.

The Tribunal has allowed interest @ 12% per annum from the date of filing of the claim application; however, in the circumstances of the case and looking to the period of litigation and the proportion of enhancement being allowed herein, it appears appropriate to allow interest @ 7.5% on the enhanced amount of Rs.28,000/- from the date of filing of the claim application, i.e. 20.01.1983.

In the result, this appeal succeeds and is partly allowed to the extent indicated above. The award of compensation made by the Tribunal in the sum of Rs.44,000/- is modified and the claimants are allowed compensation in the sum of Rs.72,000/- and shall, therefore, be entitled for a further amount of Rs.28,000/- over and above the amount awarded by the Tribunal with interest @ 7.5% per annum from the date of filing of claim application. It shall be required of the respondent No. 2, owner of the vehicle, to deposit the amount payable under the modified award within 30 days with the Tribunal that shall carry out appropriate apportionment and issue necessary orders for disbursement.

There shall be no orders as to costs of this appeal.

(DINESH MAHESHWARI), J.

Mohan